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OGC Has Reviewed

OGC 64-3074 (a)

13 November 1964

MEMORANDUM FOR: Chief, Certification & Liaison Division, O/F

SUBJECT: Service Agreement for Assignment
Abroad -

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1. Some time ago you requested our opinion as to whether the question of violating a service agreement as provided in must be presented in all cases to the Director of Personnel whenever the time requirement has not been fulfilled. Our Office answered in the negative the question in the case you presented for the reason that the Deputy Director of Personnel had concurred for the Director of Personnel in the action taken, thereby obviating the need for Personnel's review for a second time. The general issue remains as to whether acceptability to the Director of Personnel of the reason for violation of the service agreement is necessary where employees are ordered to return to Headquarters for operational security reasons and then are separated from the Agency.

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2. may be interpreted to prohibit the reimbursement to an employee for expenses of travel and transportation incident to appointment or transfer to a post abroad in violation of his service agreement, unless he is separated from the Agency for reasons which are "acceptable to the Director of Personnel" as valid for so separating and which are beyond the employee's control. The Regulation leaves a rather wide latitude of discretion to the Director of Personnel, provided the employee is separating and not simply returning to PCS Headquarters duty. Moreover, where the employee's tour is cut short strictly at the convenience of the Government, subparagraph 4b would not apply. An

SECRET

employee returning because of misfeasance or nonfeasance may be assumed to have done so at his own personal convenience. Whether subparagraph 4b should be applied in the latter case should depend upon whether the return is preliminary to termination for cause. In the typical case of this nature the offending employee could be expected to be returned PCS Headquarters prior to termination. The real reason for his shortened tour, nevertheless, is separation from the Agency. The Director of Personnel, therefore, must review such actions in accordance with subparagraph 4b.

3. The situation in which operational security requires the return of the employee from a post abroad may involve either personal or Government convenience, or both. It would defeat the intent of the Regulation with respect to these cases if the operating official could, without reference to the Director of Personnel, determine whether the employee had returned for personal convenience and was thereafter separated. It would be appropriate, therefore, for the Director of Personnel to review this determination, which in effect would require him to review the employee's reasons for separation from the Agency as provided in subparagraph 4b of the Regulation. The answer to the question set forth in Paragraph 1 above, therefore, is in the affirmative.

[Redacted]

Assistant General Counsel

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cc: SSA/DDS
Dir of Pers

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